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1951

O. Lotteries and

File No. Prize Competition/51

Legal Deptt

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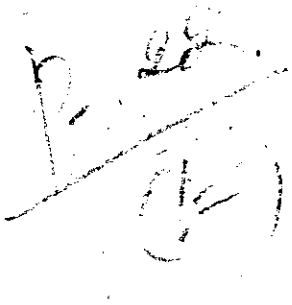
Subject:— Opinions under the Bombay Lotteries and Competition Control and Tax Act 1948



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MRP.
11/3/56.

Legal Department.

Bombay Lotteries and Prize Competitions Control and Tax Act, 1948. Sections 7, 9, 10 and 11.

Section 7 of the Bombay Lotteries and Prize Competitions Control and Tax~~ation~~ Act, 1948, provides for the issue of a licence in respect of prize competitions. Under section 9 every licence granted under this Act shall be granted by the Collector on payment of such fees and subject to such conditions and shall be in such form as may be prescribed. Clause (c) of section 10 provides that notwithstanding anything contained in this Act or any Rules made thereunder it shall be lawful for the Provincial Government by general or special order to direct that no licences specified in such order shall be granted without the previous approval of the Provincial Government. No such direction was issued prohibting the issue of any licence to the National Standard. It ~~is~~ is true that under clause (d) of that section power is given to Government to issue such other instructions in any matter pertaining to the grant or otherwise of licences under the Act as the Provincial Government may deem proper. But such instructions would not extend to the total prohibition of the grant of licences under the Act, since otherwise it would be in contravention of sections 7 and 9. In this connection attention is invited to the decision of the Bombay High Court in Ratanshaw Nusserwanji v. McElhinny, 43 Bom.L.R. page 896, where it was held that an order issued by Government under section 4 of the Bombay Abkari Act prohibiting the issue of licences under that Act was held unlawful. The instructions

issued by .....

issued by Government in Circular No.7049/5-I dated the 25th September 1950 would not, therefore, be considered statutory instructions. They would merely be executive instructions which would not, strictly speaking, fetter the statutory discretion of the Collector in issuing the licences. Under section 11, the Collector can suspend or cancel a licence granted under this Act for the reasons specified in clauses (1) to (5). Clause (5) provides for the cancellation or suspension of the licence for any other reason for which suspension or cancellation of the licence is, in the opinion of the Provincial Government, necessary in the public interest. It is clear from this provision that the cancellation or suspension of a licence cannot be ordered arbitrarily, and it will have to be done for cogent and satisfactory reasons and as provided in section 11(5) if the licence is to be suspended or cancelled it will have to be done only if it be, in the opinion of the Provincial Government necessary in the public interest. 'Public interests' means those interests which concern the public at large. 'Mater of public interest' does not mean that which is interesting or gratifying curiosity or love of information or amusement but that in which a class of community havs a pecuniary interest or some interest by which their legal rights or liabilities are affected (per Campbell C.J.R. vs. Bradfordshire, 4 Bnd. 541/542). The question, therefore, would be: whether there are valid reasons for holding that the cancellation of the licence which has been issued by the Collector in the present case and which would be valid upto to the 13th March 1951 is in the public interest.

3. It is true that Government had issued orders in circular ....

in circular No.7049/5-I dated the 25th September 1950 directing that in future no licences should be issued for Prize Competitions under the Bombay Lotteries and Prize Competitions Control and Xxxx Tax Act, 1948, without prior consultation with Government. As stated above this circularX is not statutory but is in the nature of executive instructions. Consequently, although the licence, in the present case, was issued on 18th October, 1950 with effect from the 15th October 1950 in contravention of the aforesaid circular it could not be considered as invalid. It is suggested that the details of the Competition were allowed to be varied by the Collector and those details are such that they would, in fact, provide for a new licence and the variations should not have been allowed. It is true that the variations allowed by the Collector were drastic but clause (2) of the conditions of the Licence in Form F does n provide that "the Licensee shall not vary the details of the Compensation, entrance fee and prize stated in respect thereof in the schedule hereto annexed without the previous permission of the licensing officer." Whether the licensing officer should or should not have allowed the variation is not material for the purpose. He has, in fact, allowed the variations under this clause and notwithstanding these variations the competion would still remain a prize competition within the meaning of the Act. Consequently, the variations allowed would not change the nature of the licence and would not provide a valid ground for holding that the licence

should be ....

should be cancelled.

4. Secretary Home Department seems to feel the difficulty that "if other licences are renewed for the year 1951/52 it will not be correct not to renew this licence then if we allow it to continue now." This difficulty can be got over by issuing a general or special order under section 10 that the renewal of licences will not be ~~correctxxx

Legal Department.

It appears that the intention of the applicant is to keep prize coupons of the value ranging from three pies to one rupee in packed bottles of tooth powder manufactured by him. The H.D. wants to know whether it will amount to a lottery within the meaning of the Bombay Lotteries and Prize Competitions Control and Tax Act, 1948. In Webster's Dictionary a lottery is defined to be a "distribution of prizes by lot or chance". The prize scheme proposed by the applicant would, therefore, amount to a lottery. In Taylor v. Smetten (1883, 11 Q.B.D.207) on similar facts the transaction was held to be a lottery. In that case a sale of one pound packets of tea was held, in which, it was publicly stated, and stated truly, that there was a coupon entitling the purchaser to a prize, and each purchaser did in fact receive the prize mentioned on such coupon.

Attention is also invited to H.L.A's opinion dated the 27th February 1951, a copy of which is appended.

Sd. B.D.Kirchandani
Additional Secretary to Government.

U.R.to H.D.No.3811, dated the 7th March 1951.

HNP.
11/8/56.

Office of the R.L.A.

Bombay Lotteries and Competitions Control and Tax Act, 1948.

In this case the newspaper advertised that whoever was the purchaser of a copy bearing any of the five lucky numbers (kept in a sealed cover) would be entitled to a prize in cash. This would be a scheme for the distribution of prizes by lot or chance, and would be a lottery (See Schoolbred's Law of Gaming and Betting, p.170). Assuming that it would be a prize competition within the meaning of the Bombay Lotteries and Prize Competitions Control and Tax Act, 1948, it was not licensed. In either case, it was an offence under the said Act and was punishable thereunder. The view taken by the District Government Pleader, Surat, is not correct.

2. Whether a prosecution should now be instituted is for the Home Department to consider.

Sd. J.R.Dhurandhar
27/2
Remembrancer of Legal Affairs.

HRP.
13/8.

No.3573.

Office of the

Remembrancer of Legal Affairs,

Bombay Castle,(Bombay No.1), 23th February 1951

To

The District Magistrate,

SURAT.

Subject:- Lotteries & Competitions Control & Tax Act, 1948.

Reference your letter No.P.O.L.S.R.296 dated the 4th October 1950.

2. A copy of the opinion of the R.L.A. is sent herewith.

3. Your attention is also invited to Rule 20 of the Law Officers' Rules.

Sd. M. R. Dhurandhar
27/2

Remembrancer of Legal Affairs.

HRP.
13/8/56.

of which is not yet ascertained or not yet generally known; and

(iii) any other competition success in which does not d pend to a s"bstantial degree upon the exercise of skill,

but does not include a prize competition contained in a newspaper printed and published outside the Provinces of Bombay. The proposed competition is in the nature a 'missing words prize competition', but for such a competition to be a 'prize competition' it is necessary under clause (i) that the solution is prepared beforehand by the promoters of the competition or is determined by lot. It appears from draft Rule 4 that in the present case the solution is neither to be prepared beforehand nor determined by lot. The prize winning solution is to be determined by the Editor after the entries are received, depending upon his judgment as to what are the most apt answers having regard to the sense and rhytm of the verses. The proposed competition cannot, therefore, be regarded as a 'prize competition' within the definition in clause (i) of ~~sec~~ section 2(1)(d). Clause (ii) of the definition has no application to a competition of the kind proposed. ~~Nor~~ Nor has clause (iii) of the definition any application, for that clause refers only to "any other competition" not specifically referred to in the earlier clauses. A missing word prize competition has been specifically provided for in clause (i) of the definition. The proposed competition, therefore, cannot be held to be a prize competition within the meaning of the Act and as such it will not require a licence.

The contention .....

The contention that if no entry-fee is charged a prize competition will not come within the scope of the Act is not correct. Charging of a fee is not a necessary ingredient of a prize competition as defined in the Act. If a competition is otherwise a prize competition within the meaning of the Act, the fact that no entry fee is charged will not make any difference. Under the Act taking of a licence is necessary in the case of a prize competition whether entry fee is charged or not. The contention of the applicant appears to be based on section 12(1)(b) of the Act which provides that there shall be levied in respect of every prize competition for which a licence has been obtained a tax at a rate not exceeding twenty-five per cent. of the total sum received in respect of the competition as may be fixed by Government. That provision with regard to taxation of prize competitions, no doubt, appears to have been worded on the presumption that there will be entry fee charged in respect of every prize competition. But as pointed out above the Act does not any where require that the charging of entry-fee is an essential ingredient of a prize competition or that the promoter of a prize competition is bound to charge entry fee. The only way in which the fiscal provision in section 12 can be interpreted is that where such fees are charged the tax shall be leviable and where no such fees are charged no such tax would be leviable. But it does not follow that because no tax is leviable in respect of prize competitions for which no entry fee is charged, such prize competitions are not prize .....

not prize competitions within the meaning of the Act.

Also the proposed competition cannot be regarded as a lottery so as to attract the provisions relating to lotteries in the Bombay Lotteries and Prize Competition Control and Taxes Act, 1948. The word "lottery" has not been defined in the Act, but as well understood a lottery consists of any scheme for the distribution of money by chance. In the present case the distribution of money prizes does not depend upon chance but on the ingenuity and judgment shown by the competitors in suggesting the most apt missing words in the verses. The fact that the editor will be the judge of the most apt solution will not affect that position; for were it otherwise even an elocution or fancy dress competition at which prizes are distributed according to the decision of judges appointed by the promoters would amount to a lottery.

Sd. B.D.Mirchandani
Additional Secretary to Government,
Legal Department.

U.R.to H.D.,No.8510, dated the 30th May 1951.

MRP.
13/8/56.

The contention that if no entry-fee is charged a prize competition will not come within the scope of the Act is not correct. Charging of a fee is not a necessary ingredient of a prize competition as defined in the Act. If a competition is otherwise a prize competition within the meaning of the Act, the fact that no entry fee is charged will not make any difference. Under the Act taking of a licence is necessary in the case of a prize competition whether entry fee is charged or not. The contention of the applicant appears to be based on section 12(1)(b) of the Act which provides that there shall be levied in respect of every prize competition for which a licence has been obtained a tax at a rate not exceeding twenty-five per cent. of the total sum received in respect of the competition as may be fixed by Government. That provision with regard to taxation of prize competitions, no doubt, appears to have been worded on the presumption that there will be entry fee charged in respect of every prize competition. But as pointed out above the Act does not any where require that the charging of entry-fee is an essential ingredient of a prize competition or that the promoter of a prize competition is bound to charge entry fee. The only way in which the fiscal provision in section 12 can be interpreted is that where such fees are charged the tax shall be leviable and where no such fees are charged no such tax would be leviable. But it does not follow that because no tax is leviable in respect of prize competitions for which no entry fee is charged, such prize competitions are

not prize .....

Office of the R.L.A.

In his opinion No.8510 dated 30th May 1951 the Additional Secretary held that the prize competition scheme proposed to be promoted by the proprietors of 'Onlooker' does not fall under clause (i) of section 2(1)(d) of the Bombay Lotteries and Prize Competitions Control and Tax Act, 1948. The reason for the conclusion was that rule 4 of the draft rules relating to the competition did not provide for the solution beforehand or by lot. A doubt has been raised as to the correctness of the view on the ground of the omission of a comma after the words "any other competition" in section 2(1)(d)(i). It is true that the Act of 1948 repealed the Bombay Prize Competitions Act, 1939. Clause (2)(a) of section 2 of the latter Act related to the definition of the expression "prize competition". The said definition is similar to the definition of the same expression in the present Act with the only variation that it contains a comma after the words "any other competition" making it clear that the words which follow, i.e., the words "for which the solution is prepared beforehand by the promoters of the competition or for which the solution is determined by lot", govern all the expressions, "cross-word prize competition", "missing words prize competition", etc. But it does not appear from the proceedings under the Act of 1948 that the omission of a comma after the words "any other competition" in section 2(1)(d)(i) was deliberate or was made with the intention of altering the law and for providing that the words which follow the words "any other competition"

should govern ...

should govern those words only and not the whole of the clause. In England courts do not take any notice of punctuation. Although the law is not clear in India, so far as this particular case is concerned, having regard to the history of this particular legislation, a court would not hold that there was intention to change the law in regard to the definition of "prize competition". This view is supported by the proceedings underlying the Act of 1939. It appears that the definition of "prize competition" was based on the decision of the English Court in Coles v. Oldham Press Ltd. (1936) 1 K.B. 416. That case related to a cross-word puzzle in which the promoters had advertised that the decision was prepared beforehand. It would therefore be proper to hold that notwithstanding the absence of a comma after the words "any other competition" in section 2(1)(d)(i) of the Act of 1948, the words following these words govern the whole ~~sec~~ clause.

2. But that does not mean that the competition proposed to be promoted in the present case is not a prize competition within the meaning of ~~sec~~ section 2(1)(d) of the present Act. Although it may not fall under clause (i) of that section, it can be held to fall under clause (iii) which relates to any other competition success in which does not depend to a substantial degree upon the exercise of skill. That clause would apply to all other prize competitions in which the decision may not have been prepared beforehand or by lot though such competitions may be cross-word puzzles or missing words puzzles. It is true that in the

present case ....

present case the prize winning solution is to be determined by the Editor after the entries are received, depending upon his judgment as to which are the most apt answers having regard to the sense and rhythm of the verses. If therefore any skill is to be used as regards the present competition, in the words of Hewart C.J. in Coles v.Oldham Press Co. "the skill is to be directed only to the lucky guessing ..... by a person whose idiosyncrasies are as completely concealed as his methods". In the same case Huphrey J has remarked that if more than one alternative solutions are possible and one of which would be selected by some person by some method which is not indicated, the competition would on the face of it be an invitation to take part in a lottery. Thus the result of the competition would depend on chance and not merely on the exercise of skill. The competition in the present case is of this nature and can be held to fall under clause (iii) of section 2(1)(d) of the Act, although it does not fall under clause (i). The fact that no entrance fee is charged will, as pointed out in the opinion of the Addl. Secretary, not make any difference. The promoters may therefore be informed that they will have to take out a licence.

Sd. J.R.Dhurandhar
9/6
Remembrancer of Legal Affairs.

U.R.to H.D.,No.9158, dated the 11th June 1951.

MRP.
13/8/56.

Legal Department.

The Lokshakti of Surat published in its issue of 15-8-1950 a scheme of distribution of prizes whereby those persons who purchased copies bearing certain numbers were entitled to prizes. Five lucky numbers were selected.

The Home Department after consulting R.L.A. decided to prosecute the relevant parties for offences under the Bombay Lotteries and Prize Competitions Control and Tax Act, 1948 (Bom.Act LIV of 1948). In the meanwhile the paper has ceased publication. The Home Department is of the view that though the newspaper has ceased publication the then editor, proprietor and publisher of the newspaper can be prosecuted unless it is obvious that the offence was committed without his knowledge or consent; but Home Department desires R.L.A. to advise whether this view is correct.

Section 25 of the Act lays down that where a person committing an offence under the Act is a company or an association of persons (whether incorporated or not) every person who at the time of the commission of the offence was a director, manager, secretary, agent or other officer or person concerned with the management thereof shall, unless he proves that the offence was committed without his knowledge or consent, be deemed to be guilty of such offence. Home Department's view is therefore correct.

Sd. B.D.Mirchandani
Additional Secretary to Government.

U.R.to H.D.,No.10469,dated the 2nd July 1951.

MRP.
13/8/56.

Office of the R.L.A.

The first question raised for the consideration of the R.L.A. is whether the position stated in para.1 of R.L.A's opinion No.83-L, dated the 23rd June 1938, viz. that under the English Betting and Lotteries Act, 1934, (24 and 25 Geo. Ch.58) prize competitions are unlawful still holds good. Section 26 of the English Betting and Lotteries Act, 1934, makes it unlawful to conduct in or through any newspaper any competition in which prizes are offered for forcasts of the result of events or any other competition success in which does not depend to a substantial degree upon the exercise of skill. The English Acts were looked up and this position does not appear to habe been changed.

2. The next question raised for consideration is whether in view of R.L.A's opinion No.13805, dated 30th September 1950, crossword prize competitions like those conducted by the Illustrated Weekly of India and other newspapers in which the solution is determined after the close of the entries would be prize competitions within the meaning of section 2(1)(d) of the Bombay Lotteries and Prize Competitions Control and Tax Act, 1948. It appears that all the promoters of crossward competitions have now started the practice of determining the solution after the close of the entries. In his opinion No.13805, dated 30th September 1950, the R.L.A. had expressed the view that the definition of "prize competition" in section 2(1)(d) being an inclusive definition, the preparation of the solution after the receipt of the entries would not affect the

position .....

the position. The view expressed by the Home Department at 'X' on page 58 ante appears to be correct. In this connection attention of the H.D. is also invited to para.2 of R.L.A's opinion No.9158, dated the 11th June 1951 (pages 47-51 ante). Obviously there are more than one alternative solution in respect of several of the crosswords; and in selecting the required word, no amount of skill would be required. The crossword competitions can therefore also be held to fall under clause (iii) of section 2(1)(d).

3. The last question is whether the view expressed at 'A' in the Home Department office note dated 10th May 1951 at page 31 ante in regard to the competition conducted by the 'Current' is correct. In that competition a competitor is given the first line and he is asked to compose a verse (of probably 4 lines) based on it. This competition is not in the nature of a competition, the result of which does not depend to a substantial degree upon the exercise of skill. The view expressed by the H.D. that the said competition does not fall within the definition of "prize competition" in the Act is correct.

Sd. J.R.Dhurandhar
11/7
Remembrancer of Legal Affairs.

U.R.to H.D.,No.11001, dated the 12th July 1951.

MRP.
13/8/56.

Legal Department.

The view of the Home Department that Scheme B of the Public Buildings Construction Co. Ltd. is not a lottery and does not invite the application of the Bombay Lotteries and Prize Competitions Control and Tax Act, 1948, is correct.

Sd. B.D.Mirchandani
Additional Secretary to Government.

U.R.to H.D.,No.14850, dated the 18th September 1951.

MRP.
13/8/56.

Legal Department.

Bombay Prize Competitions Control and Tax Act, 1948.

Section 3.

Vanguard Cloth Stores. Free One hour sale Scheme.

The scheme of "free sale for one hour" proposed by Messrs. Vanguard Cloth Stores is as follows:-

(1) The day of one hour's free sale will be announced in advance on a board at the shop.

(2) The hour of free sale will be determined in the following manner:

Ten sealed covers containing ten different hours will be prepared one day prior to the announced date. Out of these ten covers one will be kept aside, in the presence of at least two customers while the remaining will be torn and thrown away. The sealed cover so retained will be opened in the presence of five customers on the day following the day of hour's free sale and the hour written in the chit found in the sealed cover will be the hour which will be regarded as the hour of free sale.

(3) The time of purchasing will be mentioned in all bills issued on that day.

(4) After determination of the free sale's hour the amount of the bill will be refunded to all customers who purchased during that hour.

The R.L.A. is requested to advise whether the scheme is a lottery and therefore unlawful under section 3 of the Bombay Prize Competitions Control and Tax Act, 1948.

2. The term "lottery" has not been defined in the Bombay Lotteries and Prize Competitions Control and Tax Act; and therefore its dictionery meaning will have to be looked into. Webster defines that term as follows:- "A scheme for the distribution of prizes by lot or chance especially a ....

especially a scheme by which one or more prizes are distributed by chance among persons who have paid or promised a consideration for a chance to win them, especially by the numbers of tickets as drawn from a lottery-wheel.

In this case the Vanguard Cloth Stores propose to start a scheme whereunder all customers making their purchases during a particular hour, written beforehand in a sealed cover, would be entitled to a refund of the purchase money. This scheme is obviously a lottery. Attention is invited to opinion of the Additional Secretary, Legal Department No.3811 dated 7th March 1951.

Sd. B.D.Mirchandani
Additional Secretary to Government.

U.R.to H.D.,No.16240, dated the 13th October 1951.

MRP:
13/8/56.